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Attorneys for plaintiffs United States
for the Use and Benefit of Clean Earth Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON VICINAGE

United States for the Use and Benefit of
CLEAN EARTH, INC. and
CLEAN EARTH, INC.,

Plaintiff,

-against-

ENDURANCE AMERICAN INSURANCE
COMPANY,

Defendants.

CIVIL ACTION

2:15-CV-_____(____/____)

**COMPLAINT FOR
RECOVERY UNDER
MILLER ACT
PAYMENT BOND**

Plaintiffs, United States for the Use and Benefit of Clean Earth Inc. and Clean Earth Inc
("Clean Earth") by its attorneys King & King LLP, for its complaint, allege as follows:

JURISDICTION, VENUE AND VICINAGE

1. This action is within the jurisdiction of this Court by virtue of the provisions of
the Miller Act, 40 U.S.C. § 3133(b)(3)(B).

2. Venue is appropriate in this district pursuant to 40 U.S.C. § 3133(b)(3)(B)
because the subject Federal project is located in Monmouth County, New Jersey.

3. Intradistrict assignment to this vicinage is appropriate because the subject Federal project is located in Monmouth County, New Jersey.

PARTIES

4. Plaintiff Clean Earth Inc. (“Clean Earth”) is a business corporation duly authorized to conduct business in the State of New Jersey. Clean Earth’s place of business is at 334 South Warminster Road, Hatboro, PA 19040. Clean Earth is in business as a company providing services involving the remediation, transportation, hauling, storage, processing, treatment and disposal of specific types of material, including soils and other materials typically excavated in dredging and in construction operations.

5. Upon information and belief, defendant Endurance American Insurance Company (“Endurance”) is an insurance company organized and existing pursuant to the laws of Delaware and authorized to transact insurance business as a surety in the State of New Jersey, with offices at 750 Third Avenue, New York, N.Y. 100017. Endurance provided a Miller Act payment bond for the subject Federal public works project bearing Bond # EAIC281500028 dated November 20, 2014 (the “Payment Bond”).

STATEMENT OF FACTS

6. On or about November 20, 2014, J.T. Cleary Inc. (“J.T. Cleary”) was awarded a contract from the United States Army Corp of Engineers, USACE District New York, for a Federal public works project titled “Maintenance Dredging of Sandy Hook Bay at Leonardo, New Jersey Federal Navigation Project” Solicitation Number W912DS-14-B0015 (“Contract” or “Project”). As part of the Contract, J.T. Cleary was required to and provided the aforementioned Payment Bond, naming Endurance as the surety.

7. Under the terms of the Payment Bond, Endurance was obligated to pay subcontractors and suppliers to the subject public work Project in the event that J.T. Cleary failed to pay for the work and services provided by subcontractors and suppliers.

8. Under the terms of the Payment Bond, Endurance's obligations were for the benefit of the subcontractors and suppliers.

9. Under the terms of the Payment Bond, Endurance's obligations were joint and severable. The other terms and conditions of the Payment Bond are incorporated herein in full.

10. On November 26, 2014, Clean Earth entered into a subcontract ("Subcontract") with J.T. Cleary for performance of processing and disposal of certain material dredged or removed by J.T. Cleary as part of the work under the Contract.

11. Clean Earth performed its work under the Subcontract.

12. Clean Earth issued invoices for work it performed as follows:

Invoice	Date	Original Sum	Balance Due
57312	12/12/2014	\$111,000.00	\$11,100.00
58609	12/31/2014	\$990,660.00	\$99,066.00
59328	1/28/2015	\$666,088.50	\$636,088.50
60015	2/16/2015	\$483,356.13	\$483,356.13
60358	2/23/2015	\$38,801.05	\$38,801.05
		\$2,289,905.68	\$1,268,411.68

13. Clean Earth performed all of its obligations and work under the Subcontract and performed work that totaled the sum of \$2,289,905.68, from which sum the amount of \$1,268,411.68 remains unpaid and portion due from at least January 11, 2015.

14. Clean Earth demanded payment from J.T. Cleary of the \$1,268,411.68 sum due but no part of which was paid.

15. On March 27, 2015, filed a \$1,268,411.68 claim against Endurance under the Payment Bond.

16. Endurance has failed or had neglected to make the required payment under the Payment Bond.

17. Clean Earth has been damaged a sum of \$1,268,411.68, plus interest, costs, attorney fees and such other and further damages as permitted by law.

CAUSE OF ACTION

18. Plaintiff incorporates and re-alleges the allegations above with the same force and effect as though fully set forth at length herein.

19. The subject Payment Bond was provided for the benefit of subcontractors and suppliers of labor and services who provided work and services for the Project.

20. The labor performed and services furnished by Clean Earth under the Subcontract were required and were actually performed and furnished in the prosecution of the Project and are recoverable under the Payment Bond.

21. Clean Earth has complied with all of the terms and conditions of the Payment Bond on its part to be performed prior to commencing this lawsuit.

22. Clean Earth has requested Endurance pay the sum of \$1,268,411.68 and Endurance has failed to pay the sum requested.

23. By reason of the foregoing, there is due and owing to Clean Earth the sum of \$1,268,411.68 under the Payment Bond, no part of which has been paid although duly demanded.

24. Clean earth is entitled to payment from endurance pursuant to the 40 U.S.C. § 3133.

RELIEF REQUESTED

WHEREFORE, the plaintiff request that the Court award plaintiff a judgment on its cause of action in the amount of \$1,268,411.68 plus interest, costs, disbursements, attorney fees together with such other and further relief as to the Court may seem just and proper.

DATED: August 11, 2015

KING & KING, LLP

BY: *Peter M. Kutil*

Peter M. Kutil

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Certification Pursuant to Rule 201.1(d)

Peter M. Kutil certifies as follows:

The within civil action seeks damages in excess of \$150,000.00, exclusive of interest and cost.

DATED: August 11, 2015

BY: *Peter M. Kutil*

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Certification of No Other Action

Peter M. Kutil certifies as follows:

The within matter is not the subject of any other action pending in any other court and is likewise not the subject of any pending arbitration proceeding or administrative proceeding.

DATED: August 11, 2015

BY: *Peter M. Kutil*

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